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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Fourteenth session
29 July-2 August 1996

ANNOTATIONS TO THE PROVISIONAL AGENDA

Prepared by the Secretary-General pursuant to the request of the Working Group on Indigenous Populations at its thirteenth session

1. Election of officers

1. Rule 23 of the rules of procedure of the functional commissions of the Economic and Social Council provides that, unless the Commission decides otherwise, its subsidiary organs shall elect their own officers.

2. Adoption of the agenda

2. Rule 7 of the rules of procedure provides that the agenda shall be adopted at the beginning of each session, after the election of officers, on the basis of the provisional agenda. The provisional agenda for the present session of the Working Group on Indigenous Populations, as drafted in consultation with the Chairperson-Rapporteur, Ms. Erica-Irene Daes, is contained in document E/CN.4/Sub.2/AC.4/1996/1.

3. The provisional agenda for the fourteenth session of the Working Group contains the following substantive items: "Standard-setting activities", including a sub-item, "The concept of indigenous peoples"; "Review of developments pertaining to the human rights and fundamental freedoms of indigenous people", including a sub-item, "Health and indigenous peoples"; "Treaties, agreements and other constructive arrangements between States and indigenous populations"; "International Decade of the World's Indigenous People"; "Consideration of a permanent forum for indigenous people"; "Other matters". The Commission on Human Rights, in its resolution 1996/40 of 19 April 1996, requested the Working Group to include in its agenda the question of how it will contribute to the Secretary-General's review of existing mechanisms, procedures and programmes concerning indigenous people, providing information in that regard on its mandate and current work programme. The question may be taken up under item 8 of the provisional agenda.

3. Organization of work

4. The attention of the Working Group is drawn to the provisional agenda and the need to complete its discussion of the six substantive items within the five working days allotted. At previous sessions, the Chairperson-Rapporteur has set strict time-limits in order to ensure that all participants wishing to make a statement are given the opportunity to do so. Such time-limits will again be necessary in order to ensure that all items of the agenda are comprehensively discussed.

4. Standard-setting activities

5. Under the mandate established by the Economic and Social Council in its resolution 1982/34 of 7 May 1982, the Working Group is authorized to meet to "give special attention to the evolution of standards concerning the rights of indigenous populations". At its fourth session in 1985, the Working Group under this item of its agenda decided that it should aim at producing as a first formal step a draft declaration on indigenous rights. At that session, seven principles were drafted in preliminary wording (E/CN.4/Sub.2/1985/22, annex II). As in previous years, the report of the Working Group was transmitted to Governments, intergovernmental and non-governmental organizations and indigenous organizations. Comments on the draft principles were requested from these interested parties. It may be noted that every year since 1985, the draft declaration as prepared by the Chairperson-Rapporteur of the Working Group, Ms. Erica-Irene Daes, has been transmitted by the Secretary-General to Governments, intergovernmental and non-governmental organizations and indigenous organizations, requesting their proposals, suggestions and comments. At its fifth session in 1987, the Working Group adopted 14 draft principles in preliminary wording (E/CN.4/Sub.2/1987/22, annex II). The Chairperson-Rapporteur was entrusted with the task of preparing a set of draft principles and preambular paragraphs for insertion into a future declaration. This working paper was adopted as a preliminary draft declaration and formed the basis of discussions at the sixth session of the Working Group in 1988 (E/CN.4/Sub.2/1988/25). The Working Group

recommended that the Chairperson-Rapporteur prepare a first revised text of the draft declaration based on comments made during the Working Group's sixth session and the written observations received from Governments, intergovernmental and non-governmental organizations and indigenous organizations (E/CN.4/Sub.2/1988/24, annex II).

6. At its seventh session in 1989, the Working Group had before it an analytical compilation of comments received and a first revised text of the draft declaration as prepared by the Chairperson-Rapporteur (E/CN.4/Sub.2/1989/33/Add.1). This allowed for a discussion of the draft declaration article by article (E/CN.4/Sub.2/1989/36, paras. 61-92). At the eighth session of the Working Group in 1990, it was decided to establish three informal drafting groups to continue the elaboration of the draft declaration. The draft that was prepared by the Working Group at its 1990 session was based on the text of the first revised draft declaration and the analytical commentary as prepared by the Chairperson-Rapporteur and the discussions carried out in the informal drafting groups (E/CN.4/Sub.2/1990/42 and annexes). The Chairperson-Rapporteur was, once again, invited to revise the draft declaration on the basis of these comments and the written observations of Governments, intergovernmental and non-governmental organizations and indigenous organizations for presentation at the ninth session of the Working Group.

7. At its ninth session in 1991, the Working Group considered the working paper of the Chairperson-Rapporteur (E/CN.4/Sub.2/1991/36). Further discussions of the preambular and operative paragraphs of the draft declaration took place and the text was agreed upon by members of the Working Group (E/CN.4/Sub.2/1991/40, annex II). The Chairperson-Rapporteur was entrusted with the preparation of a working paper based on written suggestions provided by Governments and indigenous organizations. At its tenth session in 1992, the Working Group had before it a revised working paper as prepared by the Chairperson-Rapporteur containing the draft declaration (E/CN.4/Sub.2/1992/28). On the basis of the text before the session, the Working Group completed a preliminary reading of the preambular and operative paragraphs and began a second reading (E/CN.4/Sub.2/1992/33). The Working Group recommended that the draft declaration as revised by the Chairperson-Rapporteur on the basis of the comments made during its session as well as the information received from interested parties be presented to the Working Group at its eleventh session.

8. At its eleventh session in 1993, the Working Group had before it the working paper of the Chairperson-Rapporteur (E/CN.4/Sub.2/1993/26). Further elaborations of the draft declaration were made by members of the Working Group during the session (E/CN.4/Sub.2/AC.4/1993/CRP.4). The Working Group completed the second reading of the draft declaration and agreed upon a text (E/CN.4/Sub.2/1993/29, annex 1). In its resolution 1993/46 of 26 August 1993, the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to postpone until its forty-sixth session consideration of the draft declaration; it requested the Secretary-General to submit the draft declaration to the appropriate services within the Centre for Human Rights for its technical revision; it also requested the Secretary-General to transmit the text of the draft declaration to indigenous peoples and organizations, Governments and intergovernmental and non-governmental organizations.

9. At its twelfth session in 1994, the Working Group had before it the technical review by the Centre for Human Rights (E/CN.4/Sub.2/1994/2) and the draft declaration as agreed upon by members of the Working Group on its eleventh session (E/CN.4/Sub.2/1994/2/Add.1). In accordance with the decision taken at its eleventh session, the Working Group heard general comments on the draft declaration explaining that these would not lead to any changes in the text of the draft declaration. At its forty-sixth session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its resolution 1994/45 of 26 August 1994, adopted the draft United Nations declaration on the rights of indigenous peoples agreed upon by members of the Working Group without a vote and decided to submit it to the Commission on Human Rights at its fifty-first session. In its resolution 1995/32 of 3 March 1995, the Commission decided to recommend to the Economic and Social Council to establish an open-ended inter-sessional working group with the sole purpose of elaborating a draft declaration, considering the draft submitted by the Sub-Commission. The Commission also invited applications from organizations of indigenous people not in consultative status with the Economic and Social Council interested in participating in the working group. Such organizations were requested to send particulars of their organization to the Coordinator of the International Decade of the World's Indigenous People, who would consult with the Government concerned and transmit the information to the Committee on Non-Governmental Organizations of the Economic and Social Council for consideration and possible approval. The first session of the working group of the Commission on Human Rights to review the "Draft United Nations declaration on the rights of indigenous peoples" was held from 20 November to 1 December 1995. The report of the working group is contained in document E/CN.4/1996/84.

10. At its thirteenth session, the Working Group had before it a note by the Chairperson-Rapporteur containing certain criteria which might be applied when considering the concept of indigenous peoples (E/CN.4/Sub.2/AC.4/1995/3). At its forty-seventh session, the Sub-Commission, in its resolution 1995/38 of 24 August 1995, requested that the Chairperson-Rapporteur be entrusted with the preparation of a working paper on the concept of "indigenous people". The above-mentioned working paper is available as document E/CN.4/Sub.2/AC.4/1996/2.

5. Review of developments

11. In accordance with the mandate established under Economic and Social Council resolution 1982/34, the Working Group is authorized to review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually from Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status, particularly those of indigenous populations, to analyse such materials, and to submit its conclusions to the Sub-Commission, bearing in mind the final report of the Special Rapporteur of the Sub-Commission, Mr. José R. Martínez Cobo, entitled "Study of the problem of discrimination against indigenous populations" (E/CN.4/Sub.2/1986/7 and Add.1-4).

12. The item on the agenda reviewing developments affecting indigenous peoples provides invaluable information to members of the Working Group. The information provided is considered by them as strengthening ongoing efforts of the United Nations system to recognize, promote, protect and restore the rights of indigenous peoples. In its resolution 1996/40 of 19 April 1996, the Commission on Human Rights urged the Working Group to continue its comprehensive review of developments and of the diverse situations and aspirations of the world's indigenous people. However, it may be noted that the Working Group is not a chamber of complaints and cannot act upon specific allegations concerning violations of human rights.

13. At its thirteenth session, the Working Group decided to include under this item of the agenda a sub-item on health and indigenous peoples. In its resolution 1995/38, the Sub-Commission endorsed the decision of the Working Group and requested the Secretary-General to invite Governments, intergovernmental organizations and indigenous and non-governmental organizations to provide information, in particular on matters relating to health, to be made available as a background paper at the Working Group. The background paper prepared by the Secretary-General is contained in document E/CN.4/Sub.2/AC.4/1996/3 and addenda.

6. Study on treaties, agreements and other constructive arrangements between States and indigenous populations

14. At its fifth session in 1987, the Working Group recommended to the Sub-Commission on Prevention of Discrimination and Protection of Minorities the appointment of Mr. Miguel Alfonso Martínez as special rapporteur to prepare a study on the treaties formerly concluded with indigenous peoples in various parts of the world. In its resolution 1987/17 of 2 September 1987, the Sub-Commission endorsed the recommendation and requested Mr. Alfonso Martínez to draft the general outline of such a study. The Commission on Human Rights, in its resolution 1988/56 of 9 March 1988, recommended to the Economic and Social Council that it authorize the appointment of Mr. Alfonso Martínez as Special Rapporteur with the mandate of preparing an outline on the possible purposes, scope and sources of a study to be conducted on the potential utility of treaties, agreements and other constructive arrangements between indigenous populations and Governments for the purpose of ensuring the promotion and protection of the human rights and fundamental freedoms of indigenous populations. On 27 May 1988, the Economic and Social Council adopted decision 1998/134 by which it authorized the appointment of the Special Rapporteur with the mandate of preparing the outline.

15. The outline of the aforementioned study was presented to the Sub-Commission in 1988 (E/CN.4/Sub.2/1988/24/Add.1). In its resolution 1988/20 of 1 September 1988, the Sub-Commission endorsed the outline and requested authorization of the Commission on Human Rights and the Economic and Social Council to proceed with the study. The Commission endorsed the recommendations in its resolution 1989/41 of 6 March 1989 and the Economic and Social Council authorized the study and confirmed the appointment of the Special Rapporteur in its resolution 1989/77 of 24 May 1989.

16. The Special Rapporteur presented a working paper and two questionnaires he had prepared to the Working Group at its eighth session in 1990 (E/CN.4/Sub.2/1990/42, annex VI). The information which could be provided through the questionnaires was considered by the Special Rapporteur as vital to the study. The Sub-Commission, in its resolution 1990/28, requested the Secretary-General to submit the working paper and questionnaires to Governments and indigenous organizations for their comments. A preliminary report of the Special Rapporteur was presented to the Working Group at its ninth session in 1990 and to the Sub-Commission at its forty-third session (E/CN.4/Sub.2/1991/33). The Sub-Commission adopted decision 1991/111 of 29 August 1991 requesting that the questionnaires be submitted once again to Governments and indigenous organizations and endorsing the recommendation of the Special Rapporteur that a progress report be prepared for its forty-fourth session in 1992.

17. A first progress report was submitted to the Working Group at its tenth session and the Sub-Commission at its forty-fourth session in 1992 (E/CN.4/Sub.2/1992/32). In its decision 1992/110 of 27 August 1992, the Sub-Commission requested the Secretary-General to transmit the two questionnaires to Governments and indigenous organizations and requested the Special Rapporteur to present a second progress report to the Working Group at its twelfth session and the Sub-Commission at its forty-fourth session. In its decision 1993/110 of 26 August 1993, the Sub-Commission welcomed the discussions held at the eleventh session of the Working Group and reiterated its request to the Special Rapporteur to submit a second progress report. However, the Special Rapporteur was not able to present his second progress report as expected. The Sub-Commission, in its decision 1994/116 of 26 August 1994, recommended that the Special Rapporteur submit his second progress report to the Working Group at its thirteenth session and to the Sub-Commission at its forty-seventh session.

18. The second progress report of the Special Rapporteur was presented to the thirteenth session of the Working Group and the forty-seventh session of the Sub-Commission (E/CN.4/Sub.2/1995/27). The Sub-Commission, in its decision 1995/118 of 24 August 1995, welcomed the second progress report of the Special Rapporteur and decided to request him to submit a third progress report to the Working Group at its fourteenth session and to the Sub-Commission at its forty-eighth session. The third progress report of the Special Rapporteur is contained in document E/CN.4/Sub.2/1996/23.

7. International Decade of the World's Indigenous People

19. The recommendation to proclaim an international decade of the world's indigenous people was made by the World Conference on Human Rights in the Vienna Declaration and Programme of Action (Part II, para. 32). The General Assembly, in its resolution 48/163 of 21 December 1993, proclaimed the International Decade of the World's Indigenous People, to commence on 10 December 1994, with the period 1 January to 9 December 1994 to be set aside for planning. The General Assembly invited indigenous organizations and other interested non-governmental organizations to consider contributions they can make to the success of the Decade, with a view to presenting them to the Working Group; decided to observe one day of every year as the International

Day of Indigenous People and invited the Working Group to identify an appropriate day for this purpose; and requested that the meeting to review the International Year also consider preparations for the Decade and report to the Working Group.

20. The Commission on Human Rights, in its resolution 1994/26 of 4 March 1994, invited the Working Group to propose an appropriate day of every year to be observed as the International Day of Indigenous People, following consultations with indigenous people; and requested the Working Group to identify possible prcjects and other activities in connection with the Decade and submit them, through the Sub-Commission, to the Commission on Human Rights at its fifty-first session. The suggestions and recommendations arising from the Technical Meeting on the International Year and Decade (20-22 July 1994) were submitted to the Working Group at its twelfth session.

21. At the twelfth session of the Working Group, it was recommended that the International Day of the World's Indigenous People be observed annually on 9 August. This recommendation was endorsed by the General Assembly in its resolution 49/214 of 23 December 1994. In the same resolution, the Assembly adopted a short-term programme of activities for the Decade and invited the Commission on Human Rights at its fifty-first session to adjust or supplement it as required. In its resolution 1995/28 of 3 March 1995, the Commission decided upon a final programme of activities for the Decade for the year 1995. The General Assembly, in its resolution 49/214, also recommended that a second technical meeting on the planning of the Decade be convened immediately prior to the thirteenth session of the Working Group. The report of the second Technical Meeting (20-21 July 1995) is contained in document E/CN.4/Sub.2/AC.4/1995/5.

22. At its fiftieth session, the General Assembly, in its resolution 50/157 of 21 December 1995, adopted the programme of activities for the International Decade of the World's Indigenous People contained in the annex to the resolution. The Commission on Human Rights, in its resolution 1996/39 of 19 April 1996, welcomed the decision of the General Assembly to adopt the programme of activities for the Decade; it also welcomed the establishment by the Coordinator of the Decade of an advisory body to provide guidance with regard to the projects and programmes financed from the Voluntary Fund for the International Decade of the World's Indigenous People. The first session of the advisory body was held from 29 April to 1 May. A secretariat note on the International Decade is contained in document E/CN.4/Sub.2/AC.4/1996/4.

8. Consideration of a permanent forum for indigenous people

23. In the Vienna Declaration and Programme of Action the World Conference on Human Rights recommended that the establishment of a permanent forum for indigenous people in the United Nations system be considered (Part II, para. 32). The General Assembly, in its resolution 48/163, requested the Commission on Human Rights at its fiftieth session to give the proposal its priority consideration. The Commission, in its resolution 1994/28 of 4 March 1994, requested the Assistant Secretary-General for Human Rights to invite Governments and indigenous organizations to give their views on this

matter and transmit contributions received to the Working Group, together with a technical note addressing institutional issues.

24. At the twelfth session of the Working Group, a technical note by the secretariat was submitted as document E/CN.4/Sub.2/AC.4/1994/11 and comments received from Governments and indigenous organizations were contained in addenda to the document. The Chairperson-Rapporteur of the Working Group also submitted a note on the permanent forum (E/CN.4/Sub.2/AC.4/1994/13) and made further suggestions for guidelines which are contained in the annex to the report of the Working Group on its twelfth session (E/CN.4/Sub.2/1994/30). The Sub-Commission, in its resolution 1994/50 of 26 August 1994, recommended that the Centre for Human Rights organize a workshop on a possible permanent forum. This recommendation was endorsed by the Commission in its resolution 1995/30 of 3 March 1994 and the workshop was requested to report on the outcome to the thirteenth session of the Working Group. The Centre for Human Rights organized a workshop at the invitation of the Government of Denmark and the Greenland Home Rule Government in Copenhagen from 24 to 28 June 1995. The report on the workshop on a permanent forum for indigenous people (E/CN.4/Sub.2/AC.4/1995/7) was submitted to the Working Group at its thirteenth session.

25. The General Assembly, in its resolution 50/157, welcomed the report on the workshop and recommended that the Secretary-General undertake a review, in close consultation with Governments and taking into account the views of indigenous people, of the existing mechanisms, procedures and programmes within the United Nations concerning indigenous people, and report to the General Assembly at its fifty-first session. The Assembly also recommended that the Commission on Human Rights, drawing on the results of the review, consider the convening of a second workshop. A note by the secretariat on the possible establishment of a permanent forum for indigenous people is contained in document E/CN.4/Sub.2/AC.4/1996/5 and a compilation of relevant extracts of the programmes of action of recent high-level conferences and the conclusions and recommendations of United Nations expert seminars on indigenous themes is contained in an addendum to the document.

9. Other matters

26. Under this item of the agenda, members of the Working Group consider a range of questions including meetings and seminars which have been held or are due to be held in the near future. In this connection, it may be noted that the ninth session of the Board of Trustees of the Voluntary Fund for Indigenous Populations met from 22 to 26 April 1996 and agreed to recommend to the Secretary-General that travel grants be given to 22 indigenous delegates wishing to attend the Working Group and 4 indigenous delegates authorized to attend the working group of the Commission on Human Rights reviewing the "Draft United Nations declaration on the rights of indigenous peoples". A secretariat note on the Voluntary Fund for Indigenous Populations is contained in document E/CN.4/Sub.2/AC.4/1996/7.

27. At the invitation of the Government of Canada, the Expert Seminar on Practical Experiences Regarding Indigenous Land Rights and Claims was held at Whitehorse, Canada, from 24 to 28 March 1996. The Expert Seminar was part of

the programme of activities for the International Decade of the World's Indigenous People which was approved by the General Assembly in its resolution 49/214. The Seminar was organized pursuant to a proposal made by the Sub-Commission at its forty-fifth session and endorsed by the Commission on Human Rights in its resolution 1994/29 of 4 March 1994 and by the Economic and Social Council in its decision 1994/248 of 22 July 1994. The report of the seminar is contained in document E/CN.4/Sub.2/AC.4/1996/6 and Add.1.

10. Adoption of the report of the Working Group

28. Under rule 37 of the rules of procedure, the Working Group is to report to the Sub-Commission on the work of its session. The report of the Working Group, which is prepared while the Sub-Commission is in session, will be contained in document E/CN.4/Sub.2/1996/21.